

REMARKS/ARGUMENTS

Applicants have now had an opportunity to carefully consider the Examiner's comments set forth in the Office Action of September 2, 2009. Claims 1-27 remain in the application.

Reconsideration of the Application is requested.

The Office Action

Applicants have reviewed the subsequent office action in this case. Applicants' previous arguments were found persuasive, but the claims have been rejected on new grounds. In particular, claims 1-10, 14, 16-27 were rejected as being obvious over Chaney (US 6,947,724) in view of McHenry (6,397,055). Claims 11-13 and 15 were rejected as being obvious over Chaney in view of McHenry and Chen (US 6,574,464). Claims 1-10 and 11-13 remain rejected under 35 U.S.C. 101.

Section 101 Rejections

It is respectfully submitted that claims 1-13 and 19-27 are statutory.

With regard to claims 1-10, the statutory process as claimed in the application is tied to another statutory category (i.e., a particular apparatus).

For example, independent claim 1 recites that certain steps are performed by various specific machines, including a switching center in the network, a usage level application, a broadcast message application, and a messaging center. In this regard, attention is directed to paragraph [0025] of the specification, which states that:

It will be appreciated that certain components of the network 10, such as the switching center 14, the subscriber database 16, the messaging center 18, the billing platform 20, the ULA 22, and the BMA 24 may each be implemented with one or more specialized or general purpose computer systems. Such systems commonly include a high speed processing unit (CPU) in conjunction with a memory system (with volatile and/or non-volatile memory), an input device, and an output device, all as known in the art.

Accordingly, claims 1-10 meet the test of a statutory process asserted by the Office Action (i.e., by identifying the apparatus that accomplishes the method steps). These arguments apply equally as well to claims 19-27.

Likewise, claim 11 recites that certain steps are performed by various specific machines, including a communication network, a switching center in the network, a usage level application, a subscriber database, and a messaging center. Accordingly, claims 11-13 meet the test of a statutory process asserted by the Office Action (i.e., by identifying the apparatus that accomplishes the method steps).

Accordingly, favorable reconsideration and withdrawal of the rejection of claims 1-13 and 19-27 under 35 U.S.C. §101 are respectfully requested.

Section 103 Rejections

Independent claim 1 recites, *inter alia*, monitoring utilization of the network by a plurality of network users in real-time via a switching center in the network, detecting at the switching center a reportable statistical event based upon the occurrence of a predetermined event trigger, informing a usage level application of the reportable statistical event, determining at the usage level application whether a Usage Level Event has occurred, and recording at the usage level application the Usage Level Event, when it is determined that a Usage Level Event has occurred. The Usage Level Event is then reported to a set of network elements via the usage level application and the switching center, where the set of network elements including a customer billing platform and a broadcast message application. A set of customers is notified of a change in pricing for calls based upon the Usage Level Event through the broadcast message application and a messaging center, when it is determined that a Usage Level Event has occurred. Independent claims 14 and 19 recite similar features.

Applicants submit that neither Chaney nor McHenry discloses at least the aforementioned features of independent claim 1. In particular, it is submitted that secondary citation to McHenry does not remedy the conceded deficiency in the primary citation to Chaney. Accordingly, without conceding the propriety of the asserted combination, the asserted combination of Chaney and McHenry is likewise deficient, even in view of the knowledge of one of ordinary skill in the art.

The Office Action concedes that the primary citation to Chaney does not disclose various features of claim 1. (Office Action, pages 7-8). Nonetheless, the Office Action rejects independent claim 1, contending that the secondary citation to McHenry

provides this necessary disclosure. (Office Action, pages 8-9). This contention is respectfully traversed.

The secondary reference to McHenry relates to a mobile-to-mobile call delivery service, where the calling party pays. (McHenry, FIGS. 1-2). McHenry includes the notion of mobility, but it has no mechanism to detect a change of network load or notify in-progress callers about the rate change. Event outcomes are deterministic, based on time of day, distance called, etc., with no dynamic aspect. McHenry does not allow for the rate to change while a call is in progress. There is no mechanism for asynchronous reporting of the new rate. McHenry does not teach a mechanism for notification of rate change for in-progress calls. Thus, McHenry does not provide a disclosure that remedies the deficiencies of Chaney.

Accordingly, favorable reconsideration and withdrawal of the rejection of claims 1-10 and 14-27 under 35 U.S.C. §103 are respectfully requested.

Independent claim 11 includes, *inter alia*, sending a message to a targeted marketing application, the message indicating the Usage Level Event and the scope of the event, retrieving from a subscriber database billing rate information for the calling plans based upon the Usage Level Event, and querying the targeted marketing application for information concerning the customers that are active within the scope of the Usage Level Event and the calling plans that are impacted by the Usage Level Event.

Applicants submit that none of the cited references discloses at least the aforementioned features of independent claim 11. In particular, it is submitted that additional citation to Chen does not remedy the conceded deficiency in the citations to Chaney and McHenry. Accordingly, without conceding the propriety of the asserted combination, the asserted combination of Chaney and McHenry with Chen is likewise deficient, even in view of the knowledge of one of ordinary skill in the art.

The Office Action concedes that the citations to Chaney and McHenry do not disclose sending a message to a targeted marketing application, the message indicating the Usage Level Event and the scope of the event, retrieving from a subscriber database billing rate information for the calling plans based upon the Usage Level

Event, and querying the targeted marketing application for information concerning the customers that are active within the scope of the Usage Level Event and the calling plans that are impacted by the Usage Level Event. (Office Action, page 25).

Nonetheless, the Office Action rejects independent claim 11, contending that the additional citation to Chen provides this necessary disclosure. (Office Action, page 26). This contention is respectfully traversed.

The additional reference to Chen relates to trigger-based prepaid and postpaid billing. Chen mentions location triggers for calling and called party, but applicants submit that the location trigger event occurs when the user enters or leaves a location (i.e., a location transition). In Chen, location isn't a thing that is "checked" as in the present invention. In the present invention, even if the user never moves, the method will take into account the user's location. Chen takes location into account only when the user moves. Thus, Chen does not provide a disclosure that remedies the deficiencies of Chaney and McHenry.

Independent claim 11 also includes sending a message to the customers that are active within the scope of the Usage Level Event, the message including a notification to the customers of a temporary change in pricing based upon the Usage Level Event.

Neither McHenry nor Chaney include the notion of checking if the user's location matches the "calls on sale" area after some amount of time, which is illustrated in FIG. 6, reference numeral 430, and described in paragraph [0058].

Accordingly, favorable reconsideration and withdrawal of the rejection of claims 11-13 under 35 U.S.C. §103 are respectfully requested.

Further, in the discussion about dependent claim 12, the messaging center that the Office Action mentions in paragraph 3 is a tandem switch, which is different from an SMS center. The tandem switch is involved in the call handling, but cannot send "out of band" signals (i.e., outside of the call) to a user like an SMS center would be able to do in the present invention. Accordingly, favorable reconsideration and withdrawal of the rejection of claim 12 under 35 U.S.C. §103 are respectfully requested.

CONCLUSION

For at least the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 1-27) are now in condition for allowance. The foregoing comments do not require unnecessary additional search or examination.

- Remaining Claims, as delineated below:

(1) FOR	(2) CLAIMS REMAINING AFTER AMENDMENT LESS HIGHEST NUMBER PREVIOUSLY PAID FOR	(3) NUMBER EXTRA
TOTAL CLAIMS	27	- 27 = 0
INDEPENDENT CLAIMS	4	- 4 = 0

This is an authorization under 37 CFR 1.136(a)(3) to treat any concurrent or future reply, requiring a petition for extension of time, as incorporating a petition for the appropriate extension of time. Applicants hereby petition the Commissioner under 37 C.F.R. § 1.136(a) and request a **two month extension of time** to respond to the outstanding Office Action.

The Commissioner is hereby authorized to charge any filing or prosecution fees which may be required, under 37 CFR 1.16, 1.17, and 1.21 (but not 1.18), or to credit any overpayment, to Deposit Account Number 06-0308.

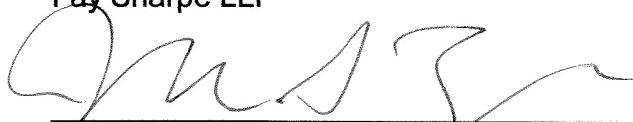
In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to telephone John S. Zanghi, at 216.363.9000.

Respectfully submitted,

Fay Sharpe LLP

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Date

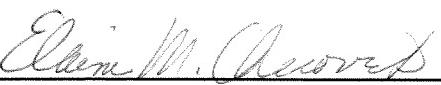


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